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21 Attorneys for Defendant FASHION NOVA, INC.

22 **UNITED STATES DISTRICT COURT**
23 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

24 JUAN ALCAZAR, individually and on
25 behalf of all others similarly situated,

26 Plaintiff,

27 vs.

28 FASHION NOVA, INC., a California
corporation; and DOES 1 to 10,
inclusive,

Defendants.

Case No. 3:20-cv-01434-TSH

*Assigned for all purposes to the Hon.
Judge Thomas Hixson
Courtroom: G-15th Floor*

**JOINT CASE MANAGEMENT
STATEMENT**

Complaint Filed: February 26, 2020
Trial Date: Not Set

1 The parties, by and through their undersigned counsel, jointly submit this Joint
 2 Case Management Statement in anticipation of the case management conference
 3 scheduled for Thursday, January 14, 2021 at 10:00 a.m. in Courtroom G-15th Floor
 4 before the Honorable Thomas Hixson.

5 1. **JURISDICTION AND SERVICE**

6 This Court has Subject Matter Jurisdiction over the claims at issue. All named
 7 parties have been served.

8 2. **SUMMARY OF FACTS**

9 **A. Plaintiff's Description of the Case**

10 Plaintiff's Complaint alleges that Defendant's Website is inaccessible to
 11 Plaintiff, who is visually impaired and legally blind. Plaintiff has attempted on several
 12 occasions to visit <https://www.fashionnova.com/> ("Website") using a screen-reader.
 13 Plaintiff alleges that Defendant's Website neglected to have the proper tools in place
 14 to ensure that people with disabilities like Plaintiff Juan Alcazar, would not encounter
 15 any barriers while attempting to visit Defendant's Website.

16 Due to the alleged accessibility barriers of Defendant's Website, Plaintiff
 17 claims that he has been denied full accessibility to either purchase an item or find a
 18 store location. Plaintiff alleges that he has been denied a web browsing experience
 19 similar to that of a sighted individual due to the Website's lack of a variety of features
 20 and accommodations which barred Plaintiff from completely accessing Defendant's
 21 Website.

22 The central issue in this case is whether Defendant violated the Americans with
 23 Disabilities Act of 1990 ("ADA"), 42 U.S.C. § 12181, and the Unruh Civil Rights Act
 24 ("Unruh").

25 **B. Defendant's Description of the Case**

26 Fashion Nova is a US-based fashion retail company founded in 2006. The
 27 company operates predominantly online, and it has five brick-and-mortar locations.
 28 Fashion Nova has devoted considerable time and resources to ensuring that its website

1 is accessible to all members of the public, including individuals who are blind or who
 2 have vision impairments. Fashion Nova has made significant updates to the website
 3 that improve the accessibility of the website for individuals and individuals with
 4 vision impairments, and it has added a specialized accessibility interface, accessiBe, to
 5 its website that enables blind individuals, individuals with vision impairments and
 6 individuals with other disabilities to customize the user interface to meet their needs
 7 based on the Web Content Accessibility Guidelines (“WCAG”) Level 2.1 Level AA
 8 success criteria.

9 Fashion Nova has encountered similar claims previously. It entered into a
 10 confidential settlement and release agreement in one case, and it has continued to
 11 work to ensure that its website is accessible to individuals with disabilities.

12 In fact, Plaintiff’s counsel filed a nearly identical putative class action on behalf
 13 of three other individuals, Elia Haggar, Kyo Hak Chu, and Valerie Brooks, in the
 14 United States District Court for the Central District of California in May 2019.
 15 *Haggar, et al. v. Fashion Nova, Inc.*, Civil Action No. 2:19-cv-4351.¹ Within two
 16 weeks of the date on which Fashion Nova filed a motion for partial summary
 17 judgment (Dkt. 22) in that case, the plaintiffs voluntarily dismissed all of their claims
 18 (Dkt. 25), and Mr. Alcazar filed this nearly identical lawsuit in this Court.

19 Fashion Nova denies Plaintiff’s allegations regarding Fashion Nova’s website,
 20 as well as all allegations in the cookie-cutter declarations he has produced to date (and
 21 which he claims he will rely upon in seeking class certification).

22 **3. LEGAL ISSUES:**

23 **A. Plaintiff’s Position**

24 Plaintiff anticipate the following questions will be at issue:

25 1) Whether the ADA and/or the Unruh Act apply to Defendant’s website and, if
 26

27 ¹ Ms. Haggar, represented by Mr. Alcazar’s counsel, filed 50 nearly identical lawsuits in the Central
 28 District. Ms. Chu has filed 12 nearly identical lawsuits in the Northern District, and Ms. Brooks, has
 filed over 75 nearly identical lawsuits in the Eastern District of California. Mr. Alcazar himself has
 filed 15 nearly identical lawsuits in the Northern District as well.

1 so, what is required of a website operator to be in compliance with the ADA and/or
2 the Unruh Act and, if so, whether Defendant's Website is accessible.

3 2) Whether Plaintiff has standing to bring the claims asserted, including
4 whether Plaintiff's claims are moot.

5 3) Whether Plaintiff is entitled to damages.

6 4) Whether a class action may be maintained for the claims Plaintiff asserts in
7 the Complaint.

8 5) Whether Plaintiff has met his burden to warrant issuance of a preliminary
9 injunction prohibiting Defendant and all those acting in concert with it from
10 violating the Unruh Civil Rights Act.

11 6) Whether Plaintiff has met his burden to warrant issuance of a permanent
12 injunction prohibiting Defendant and all those acting in concert with it from violating
13 the American With Disabilities Act of 1990.

14 **B. Defendant's Position**

15 Defendant Fashion Nova denies that there are accessibility barriers on its
16 website that create cause of action under Title III of the ADA or California's Unruh
17 Civil Rights Act. It also denies that this action is suitable for class treatment and that
18 a class can or should be certified. .

19 **4. MOTIONS**

20 There are no prior and/or pending motions at this time.

21 **A. Plaintiff's Position**

22 Plaintiff anticipates filing a motion for class certification and may seek to add
23 additional Plaintiffs.

24 **B. Defendant's Position**

25 Defendant will oppose Plaintiff's Motion for Class Certification and expects
26 that it will file a motion for summary judgment on all or some of Plaintiff's claims.

27 **5. AMENDMENTS TO PLEADINGS**

28 There are no anticipated amendments to the Complaint at this time.

1 **6. EVIDENCE PRESERVATION**

2 The parties have reviewed the Guidelines Relating to the Discovery of
3 Electronically Stored Information (“ESI Guidelines”). The parties have met and
4 conferred pursuant to Fed. R. Civ. P. 26(f) regarding reasonable and appropriate steps
5 taken to preserve evidence relevant to the issues reasonably evident in this action.

6 **7. DISCLOSURES**

7 The Parties have complied with the initial disclosure requirements of Fed. R.
8 Civ. P. 26, and have exchanged initial disclosures.

9 **8. DISCOVERY**

10 Other than Rule 26 initial disclosures, no discovery has taken place to date.

11 **A. Plaintiff’s Position**

12 Plaintiff intends to propound Requests for Production of documents, Requests
13 for Admissions, Interrogatories and Notice Defendant’s deposition pursuant to Rule
14 30(b)(6). Discovery may be needed on the following subjects:

- 15 - Website’s accessibility; and
- 16 - Data on visits to the Website.

17 **B. Defendant’s Position**

18 Fashion Nova plans to contest Mr. Alcazar’s claims on the merits, his claim that
19 this case should be certified as a class action, and his claim that he can serve as an
20 adequate class representative. Defendant proposes that the Court bifurcate discovery
21 into two phases: (1) class certification discovery (“Class Certification Phase”) and
22 (2) merits or post-certification discovery (“Post-Certification Phase”). While to some
23 extent these matters are intertwined, Fashion Nova believes that the parties will be
24 able to reach an agreement on the appropriate scope of discovery. The Class
25 Certification Phase discovery would relate to Plaintiff’s individual claims, the claims
26 of the individuals from whom Plaintiff’s counsel obtained declarations, and discovery
27 related to the propriety of class certification. Post-Certification Phase discovery
28 would relate to the merits of the individual or class claims.

1 In addition, Fashion Nova anticipates propounding written discovery, including
 2 document request, requests for admission, and interrogatories concerning Plaintiff's
 3 claims. Fashion also anticipates taking Plaintiff's deposition and depositions of any
 4 witnesses identified by Plaintiff. Fashion Nova also anticipates that it will take the
 5 discovery of any expert witness(es) Plaintiff identifies.

6 **A. Discovery Plan Pursuant to Fed.R.Civ.P.26(f)**

7 1. Rule 26(f)(3)(A): what changes should
 8 be made in timing, form, or requirement for
 9 disclosures under Rule 26(a), including a
 10 statement of when initial disclosures were made
 11 or will be made;

12 The parties do not propose any changes to the form or requirements for
 13 disclosures under Rule 26(a).

14 2. Rule 26(f)(3)(B): the subjects on which
 15 discovery may be needed, when discovery
 16 should be completed, and whether discovery
 17 should be conducted in phases or be limited to
 18 or focused on particular issues;

19 The parties see no reason to limit/focus discovery on particular issues.

20 3. Rule 26(f)(3)(C): any issues about
 21 disclosure, discovery, or preservation of
 22 electronically stored information, including the
 23 form or forms in which it should be produced;

24 The parties do not anticipate any issues relating to the disclosure or discovery of
 25 electronically stored information. They agree to address such issues in the event they
 26 arise.

27 4. Rule 26(f)(3)(D): any issues about
 28 claims of privilege or of protection as trial-

1 preparation materials, including – if the parties
2 agree on a procedure to assert these claims after
3 production – whether to ask the court to include
4 their agreement in an order under Federal Rule
5 of Evidence 502;

6 The parties do not anticipate any issues relating to claims of privilege or of
7 protection as trial material. They agree to address any such issues in the event they
8 arise.

9 5. Rule 26(f)(3)(E): what changes should
10 be made in the limitations on discovery
11 imposed under those rules or by local rule, and
12 what other limitations should be imposed; and

13 The parties do not require any changes to the limitation on discovery proposed
14 by the Federal or Local Rules.

15 6. Rule 26(f)(3)(F): any other orders that
16 the court should issue under Rule 26(c) or
17 under Rule 16(b) and (c);

18 The parties do not request any other orders that should be entered by the court
19 under Rule 12(c), Rule 16(b), or Rule 16(c).

20 **9. CLASS ACTION**

21 **A. Plaintiff's Position**

22 Plaintiff contends that the general rule is that a “class of 41 or more usually
23 sufficiently numerous” to make joinder impracticable. 5-23 Moore’s Federal Practice
24 – Civil § 23.22 (2016). Here, more than 41 persons are similarly situated to the claims
25 within Plaintiff’s complaint and, in fact, have already submitted declarations
26 indicating as much.

27 Accordingly, Plaintiff intends to file a motion for class certification on or before
28 April 29, 2021, wherein Plaintiff can provide supporting declarations and a survey

1 depicting the class's need for certification. Plaintiff will thereafter adhere to the
2 Court's motion scheduling calendar for response and reply briefs.

3 **B. Defendant's Position**

4 Defendant contends this case is not suitable for class treatment. Fashion Nova
5 plans to contest Plaintiff's claims that this case should be certified as a class action,
6 and that he can serve as an adequate class representative. Class Certification Phase
7 discovery would relate to Plaintiff's individual claims, the claims of the individuals
8 from whom Plaintiff's counsel obtained declarations, and discovery related to the
9 propriety of class certification.

10 In addition, Fashion Nova anticipates propounding written discovery, including
11 document request, requests for admission, and interrogatories concerning Plaintiff's
12 claims. Fashion Nova also anticipates taking Plaintiff's deposition and depositions of
13 any witnesses identified by Plaintiff.

14 Defendant has reviewed the Procedural Guidance for Class Action Settlements.

15 **10. RELATED CASES**

16 The parties are not aware of any related cases or proceedings pending before
17 another Judge of this Court, or before another Court or Administrative Body.

18 **11. RELIEF**

19 **A. Plaintiff's Position:**

20 As set forth in his Complaint, Plaintiff seeks:

21 (a) a declaratory judgment, under 28 U.S.C. §§ 2201.

22 (b) a preliminary injunction prohibiting Defendant and all those acting in
23 concert with Defendant from violating the Unruh Civil Rights Act and requiring
24 Defendant to take the steps necessary to make their Website fully accessible and
25 usable by visually impaired individuals.

26 (c) a permanent injunction prohibiting Defendant and all those acting in concert
27 with Defendant from violating the Unruh Civil Rights Act and requiring Defendant to
28

1 take the steps necessary to make their Website fully accessible and usable by visually
2 impaired individuals.

3 (d) an award of statutory minimum damages of \$4000 per offense per person.

4 (e) an award of costs, expenses, and reasonable attorney fees; and

5 (f) an award of such other relief as the Court deems just and proper.

6 Plaintiff reserves the right to amend his prayer for relief and sets forth
7 additional damages as additional information becomes available during discovery.

8 **B. Defendant's Position:**

9 Defendant denies that Plaintiff's claims are susceptible to resolution as a class
10 action for the reasons articulated above.

11 **12. SETTLEMENT AND ADR**

12 The parties engaged in (pre-discovery) mediation with Kari Levine, Esq. on
13 Wednesday, October 14, 2020. The case did not settle. Accordingly, the parties will
14 proceed with written discovery and depositions, with the possibility of returning to
15 mediation at a later date.

16 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

17 The parties have not consented to a magistrate judge for all purposes.

18 **14. OTHER REFERENCES**

19 The parties agree that this case is not suitable for reference to binding
20 arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

21 **15. NARROWING OF ISSUES**

22 The parties agree that no issues can be narrowed at this time.

23 **16. EXPEDITED TRIAL PROCEDURE**

24 The parties are not aware of any means to expedite or streamline the process at
25 this time.

26 **17. SCHEDULING**

27 At this time, the Court should set a briefing schedule and hearing date for
28 Plaintiff's Motion for Class Certification. The parties recommend that any future

scheduling should be handled after the Court rules on Plaintiff's Motion for Class Certification.

The parties propose the following schedule for filing and consideration of Plaintiff's Motion for Class Certification:

Opening Brief	On or before April 29, 2021 (not to exceed 35 pages)
Opposition Brief	No more than 45 days after filing of Opening Brief (not to exceed 35 pages)
Reply Brief	No more than 45 days after filing of Opposition Brief (not to exceed 20 pages)
Hearing Date	Next available law and motion date three (3) weeks after Reply is filed

18. TRIAL

A. Plaintiff's Position

Plaintiff requests a trial by jury and estimates that said trial will be seven to ten days (7-10) in length.

B. Defendant's Position

There is no right to a trial by jury under Title III of the ADA. Fashion Nova does not request a jury trial for Plaintiff's state law claim under the Unruh Civil Rights Act. Fashion Nova believes it is premature to set this matter for trial.

19. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES

The parties certify that Plaintiff and Fashion Nova are the only parties to the litigation.

20. PROFESSIONAL CONDUCT

All attorneys of record for the parties have reviewed the Guidelines for Professional Conduct for the Northern District of California.

1 Pursuant to Local Rule 5-1(i)(3), I attest that all other signatories listed, and on whose
2 behalf the filing is submitted, concur in the filing's content and have authorized the
3 filing.

4 Dated: January 7, 2021

WILSHIRE LAW FIRM

6 By: /s/ Thiago Coelho

7 THIAGO COELHO
8 Attorneys for Plaintiff
9 JUAN ALCAZAR

10 Dated: January 7, 2021

LITTLER MENDELSON, PC

12 By: /s/Robert W. Conti

13 ROBERT W. CONTI
14 JOHN (DREW) SCHAFFER
15 LITTLER MENDELSON, P.C.
16 Attorneys for Defendant
17 FASHION NOVA, INC.

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